cific performance, here a sum of money compensated sufficiently for the loss. *Post* v. *West Shore R. R. Co.,* 50 Hun 301. Justice COOLEY in *Watrous* v. *Allen,* 57 Mich. 362, 58 Am. Rep. 363, held that a court of equity will interfere by injunction to restrain the breach of a condition in a deed notwithstanding the fact that forfeiture is prescribed as the penalty of the breach. In *Whitney* v. *Union Ry. Co.,* 11 Gray 359, an injunction was granted to restrain the violation of a condition restricting the manner of using the land; so also in *Clark* v. *Martin,* 49 Pa. St. 289. But in an action for injunction to restrain the defendants from selling a certain church, the property being deeded to the church upon the condition that it be always used as such, it was held that a court of equity will not compel a fulfillment of that in a deed, the nonperformance of which works a forfeiture. *Erwin* v. *Hurd,* 13 Abb. N. C. 91, and in *Woodruff* v. *Water Power Co.,* 10 N. J. Eq. 489, the court although refusing to grant specific performance upon another ground, holds the same as in *Erwin* v. *Hurd,* supra. *Close* v. *Burlington C. R. & N. Ry. Co.,* 64 Iowa 149, *Blanchard* v. *R. R. Co.,* 31 Mich. 43, 18 Am. Rep. 142, take the same view. It would seem that the equitable remedy for a breach of a condition would in most cases do less injustice to the holder of the estate than a forfeiture and the courts being against the divesting of estates should favor it.

ELECTIONS—PRIMARY ELECTIONS—FAILURE OF NOMINEE TO FILE EXPENSE ACCOUNT.—Under § 25 (Sess. Laws Idaho, 1909) a candidate for a nomination must file an itemized statement of his expenditures not more than ten days after the day of holding the election at which he is a candidate. § 26 (Sess. Laws Idaho, 1909) provides that any candidate, failing to comply with the provisions of § 25, shall be guilty of a misdemeanor, and be ineligible to become a candidate for the office for which he was nominated. The petitioner failed to file his account within the prescribed time. In an action for a writ of mandate to compel the County Auditor to place his name on the official election ballot, *Held,* the writ would issue, inasmuch as the duty of the auditor was purely ministerial, and he could not sit in judgment on the candidate and, without a hearing, declare him guilty of a misdemeanor, and inflict the penalties incident thereto. *Fuller* v. *Corey* (1910), — Idaho —, 110 Pac. 1035.

That the rule expressed above is in accord with the general line of authority is seen by the following cases: *Miller* v. *Davenport,* 8 Ida. 593, 70 Pac. 610; *Commonwealth* v. *Coombs,* 120 Ky. 368, 27 Ky. Law Rep. 751, 86 S. W. 697; *State* v. *Falley,* 9 N. D. 450, 83 N. W. 860. The candidate must be judicially declared, by orderly and due process of law, to be ineligible on account of his violation of the direct primary law. *People* v. *McGaffey,* 23 Colo. 156, 46 Pac. 930. The principal case is of interest, first, because of the rarity of decisions on primary election laws in general; second, because it shows that the courts of the present day are shaping their decisions in accordance with their holdings in previous analogous cases under the general election laws.

EVIDENCE—PAROL TESTIMONY—ADMISSIBILITY.—Plaintiff sued to recover from defendant money paid for certain shares of corporate stock purchased by plaintiff from defendant under the following written subscription con-

tract, which was signed by plaintiff; "I hereby subscribe and agree to pay for ——— shares of stock in the Tunnel Hill Coal Company." Plaintiff based his right to recover upon a contemporaneous oral agreement with the defendant, to the effect that if the plaintiff was at any time dissatisfied the defendant would repurchase or take back the stock and refund the purchase price. This agreement rested entirely in parol. The trial court admitted parol testimony to show this agreement. Error was based on the admission of this parol evidence. *Held,* that to show defendant's agreement to repurchase by parol was not a varying of the terms of a written contract within the parol evidence rule and that its admission in this case was not error. *Hankwitz* v. *Barrett* (1910), — Wis. — 128 N. W. 430.

It would seem that the decision in the principal case is at least doubtful. It may be stated generally that parol testimony is inadmissible, if its purpose or effect is to add to, substract from, or vary the terms of a written contract, when the terms thereof are complete and unambiguous. *Reid* v. *Diamond Plate Glass Co.,* 85 Fed. 193, 29 C. C. A. 110; *Union Selling Co.* v. *Jones,* 128 Fed. 672, 63 C. C. A. 224; *Pacific Nat'l Bank* v. *San Francisco Bridge Co.,* 23 Wash. 425; *Buena Vista* v. *Billmyer,* 48 W. Va. 382; *Butler* v. *Standard Guaranty Co.,* 122 Ga. 371; *Feaster* v. *Woodfill,* 23 Ind. 493; *Baker* v. *Morehouse,* 48 Mich. 334; *Knowlton* v. *Campbell,* 48 W. Va. 294; *Woodward* v. *Mitchell,* 140 Ind. 406. See also 8 Dec. Dig., § 397. And parol testimony tending to establish a parol agreement prior to or contemporaneous with the making of the written contract and covering and relating to the same subject matter is inadmissible. *Ferguson Contracting Co.* v. *Manhattan Trust Co.,* 118 Fed. 791; *Kempshall* v. *Vedder,* 79 Ill. App. 368; *F. F. Ide Mfg. Co.* v. *Sager Mfg. Co.,* 82 Ill. App. 685; *Carr* v. *Hayes,* 110 Ind. 408. See also 8 Dec. Dig. § 441. To render parol testimony admissible to prove terms not contained in the written contract, the writing must on its face appear to be incomplete, or such incompleteness must appear from the surrounding circumstances. *Forsythe Mfg. Co.* v. *Castlen,* 112 Ga. 199; *McConnell* v. *Pierce,* 116 Ill. App. 103; *Howard* v. *Scott,* 98 Mo. App. 509; *Gormully & Jeffery Mfg. Co.* v. *Cross,* 55 N. Y. Supp. 527; *Cotton States Bridge Co.* v. *Rawlins* (Tex. Civ. App.), 62 S. W. 805; *John O'Brien Lumber Co.* v. *Wilkinson,* 117 Wis. 468, and unless such incompleteness appear, the conclusive presumption is that the parties have embodied every essential term in the contract as written, and that all prior or contemporaneous agreements of the parties touching the same subject matter are merged in the written contract. *Rucker* v. *Bolles,* 133 Fed. 858; *Standard Mfg. Co.* v. *Hudson,* 113 Mo. App. 344. The contract under which plaintiff purchased the stock in the principal case clearly is not incomplete on its face or unambiguous in its terms, being in a form usually adopted in drawing subscription contracts of that nature, nor are any circumstances shown which will rebut the presumption that the writing embodies every essential element of the contract and merges all prior or contemporaneous oral agreements. It is, therefore, difficult to determine what reasoning the court relied on to take the case out from under the operation of the general rule as to the inadmissibility of parol evidence. It would seem that the court must of necessity have based its ruling upon the

proposition that the evidence of an agreement by defendant to repurchase did not vary the terms of plaintiff's subscription contract. How such a contention could be maintained is not clear, for manifestly an unconditional contract to buy stock is a different contract entirely from a contract to purchase stock, conditioned upon the vendee being satisfied therewith and in case of his dissatisfaction the vendor agreeing to repurchase. The following cases are in direct opposition to the holding in the principal case and declare that a subscription contract to purchase corporate shares cannot be altered or modified by parol testimony. *Mefford* v. *Sell,* (Neb.), 92 N. W. 148; *Merrick* v. *Consumers Heat and Electric Co.,* 111 Ill. App. 153; *Gathright* v. *Oil City Land & Imp. Co.,* 21 Ky. Law Rep. 1657; *Newland Hotel* v. *Wright,* 73 Mo. App. 240; *McAllister* v. *Ind. & C. R. Co.,* 15 Ind. 11.

HUSBAND AND WIFE—PERSONAL TORTS BETWEEN.—Plaintiff sued her husband for assault and battery, predicating her right to sue on § 1155 of the Code of the District of Columbia (in which the parties were domiciled). That section provides: "Married women shall have power to * * * sue separately for the * * * protection of their property, and for torts committed against them as fully and freely as if they were unmarried * * *" On demurrer the action was dismissed. The Court of Appeals of the District affirmed the judgment (31 App. D. C. 557, 14 Am. & Eng. Ann. Cas. 879). On writ of error, the Supreme Court of the United States affirmed the latter court's decision, Justices HARLAN, HOLMES and HUGHES dissenting. *Thompson* v. *Thompson* (1910), 31 Sup. Ct. 111.

Mr. Justice DAY, who wrote the majority opinion, argued that public policy is opposed to such suits—that "domestic tranquility" would be impossible if either spouse were permitted to sue the other for purely personal wrongs —and that Congress cannot be presumed to have intended so radical a change in existing law by the general language above quoted. The authorities, apparently without exception, support this view. *Freethy* v. *Freethy,* 42 Barb. 641; *Phillips* v. *Barnet,* L. R. 1 Q. B. D. 436, 45 L. J. Q. B. (N. S.) 277; *Nickerson* v. *Nickerson,* 65 Tex. 281. *Schultz* v. *Schultz,* 27 Hun 26, *contra,* was overruled (89 N. Y. 644). The husband may not sue the wife for a personal wrong under a Code provision permitting her to be sued for her torts. *Peters* v. *Peters,* 156 Cal. 32, 103 Pac. 219, 19 L. R. A. (N. S.) 699. The learned judge argues that the wife may secure relief by action for divorce, maintenance, or criminal prosecution. The last point is answered by a dictum in *Sykes* v. *Speer,* (Tex. Civ. App.) 112 S. W. 422: " * * * if a husband can be held criminally responsible for an unjustifiable assault upon one whom the law has placed under his care and protection * * * certainly the same considerations of policy should permit her to recover compensation for damages which his brutality may have inflicted upon her. The dissenting opinion, by Mr. Justice HOLMES, characterizes the majority view as "judicial legislation," and argues that "with the mere policy, expediency, or justice of legislation the courts, under our system of government, have nothing to do." * * * "No exception is made in reference to the husband, if he happens to be the party charged with transgressing the rights conferred upon the wife by the statute. * * *"